

KENNETH F. CUMMINGS AND A. W. FLEMING,
EMPIRE RESOURCES, INC.

IBLA 76-741, IBLA 76-743

Decided November 12, 1976

Appeals from six decisions of the Wyoming State Office, Bureau of Land Management, rejecting 20 noncompetitive oil and gas lease offers W 53918, etc.

Set aside and remanded.

1. Oil and Gas Leases: Consent of Agency—Oil and Gas Leases: Discretion to Lease—Oil and Gas Leases: Lands Subject to

When the Forest Service recommends against issuing an oil and gas lease for public land because the land has been included within a wilderness candidate study area, the Bureau of Land Management must make an independent determination on whether not to issue a lease or whether issuance of a lease subject to appropriate stipulations is in the public interest. A case will be remanded to the Bureau of Land Management for an independent determination where it is evident that such has not been done.

APPEARANCES: Armand A. Gutierrez, Esq., Dallas, Texas, for appellants; Erol R. Benson, Esq., Office of the General Counsel, Department of Agriculture, Ogden, Utah, for the Forest Service.

OPINION BY ADMINISTRATIVE JUDGE RITVO

Kenneth F. Cummings and A. W. Fleming have appealed from a decision of the Wyoming State Office, Bureau of Land Management (BLM), which rejected seven of their noncompetitive oil and gas lease offers. Empire Resources, Inc., has appealed from five separate decisions of the BLM rejecting 13 of its offers. 1/

1/ Cummings and Fleming filed the following offers: W 53898, A 53899, W 53900, W 53901, W 53902, W 53903, and W 53906.

All of these offers were rejected for the reason that the lands are within the Palisades Wilderness Candidate Study Area No. 336 on the Targhee National Forest, and the Forest Service recommended that no lease be issued. Four of the offers of Empire Resources, Inc., were only partially rejected, the remaining lands therein being offered for lease subject to the required National Forest stipulation.

Appellants cite the Board's decision in Esdra K. Hartley, 23 IBLA 102 (1975), contending that they were advised by BLM that no independent study or determination was made by it as to whether leasing was in the national interest and, if given an opportunity to do so, they would have presented sufficient data to enable that office to determine that leasing the lands would be in the public interest. They also indicate a willingness to accept leases with appropriate stipulations.

The Forest Service responds that the facts support the decision not to lease the lands. However, in view of the decision in Esdra K. Hartley, *supra*, it requests that, if the decision cannot be sustained on the present record, the case record be remanded to BLM for such consideration as is necessary to arrive at a sustainable decision.

[1] Lands within a wilderness candidate study area are not withdrawn from oil and gas leasing. In the absence of a withdrawal of the lands from oil and gas leasing, such lands are subject to such leasing at the discretion of, and under the conditions imposed by, the Secretary of the Interior. In the exercise of its discretion, BLM should make an independent determination on whether leasing the lands, with appropriate stipulations, would be in the public interest. Recommendations by the Forest Service should be considered by BLM, but are not conclusively determinative. Fred P. Blume, 28 IBLA 58 (1976); Stanley M. Edwards, 24 IBLA 12, 83 I.D. 33 (1976); Esdra K. Hartley, *supra*. 2/

It is evident here that the BLM has not made an independent determination as to whether or not leasing of the lands would be in the public interest, but has relied entirely on the recommendations of the Forest Service. Accordingly, we set aside the decisions below and remand the case records for independent consideration by BLM of whether issuance of the leases subject to appropriate stipulations is in the public interest.

fn. 1 (continued)

Empire Resources, Inc., filed the following orders: W 53918, W 53919, W 53920, W 53921, W 53922, W 53923, W 53924, W 53926, W 53931, W 53932, W 53933, W 53934 and W 53938.

2/ Although Judge Ritvo dissented in Esdra K. Hartley, *supra*, he is bound by the ruling of the majority in that case.

If BLM, after an appropriate consideration, determines that any lease should not issue, it should issue a decision setting forth the reasons for the rejection. Stanley M. Edwards, supra at 22; Esdras K. Hartley, supra at 106.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions below are set aside and the cases are remanded to BLM for further consideration.

Martin Ritvo
Administrative Judge

We concur.

Douglas E. Henriques
Administrative Judge

Edward W. Stuebing
Administrative Judge

